

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****CRIMINAL APPEAL No. 490 of 1997****For Approval and Signature:****HONOURABLE MR.JUSTICE R.P.DHOLAKIA****HONOURABLE MR.JUSTICE MD SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
  - 2 To be referred to the Reporter or not ?
  - 3 Whether their Lordships wish to see the fair copy of the judgment ?
  - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
  - 5 Whether it is to be circulated to the civil judge ?
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**THAKORBHAI RANCHHODBHAI DHOLIYA - Appellant(s)**

**Versus**

**STATE OF GUJARAT & 1 - Opponent(s)**

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**Appearance :**

MS SADHANA SAGAR for Appellant(s) : 1,  
MR RC KODEKAR, APP for Opponent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA**

**and**

**HONOURABLE MR.JUSTICE MD SHAH**

**Date : 07/12/2005**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)**

1. This appeal has been filed by the appellant original accused against the judgment and

order of conviction dated 2-5-1997 passed by the learned Addl. Sessions Judge, Valsad, in Sessions Case No.10 of 1996 sentencing the appellant to undergo rigorous imprisonment for life and to pay fine of Rs.1,000/- and in default of payment of fine, to suffer simple imprisonment for one month under Sec.302 of IPC.

2. The facts of the case in short is that on 5-9-1995 at about 9.15 a.m. one Keshavbhai Babubhai went to the grocery shop of one Nayanaben and demanded tobacco packet. At that time, Nayanaben drew his attention and he and Nayanaben both saw that the accused was sitting on a young boy aged about 8-9 years after throwing him into muddy water. Keshavbhai tried to go very near to save the young boy but as the accused reacted, he could not go there. He therefore called other persons from the Village and ultimately overpowered the accused and the

boy who was in a muddy water was taken to the hospital wherein he was declared as dead. The Sarpanch of the Village informed Umargam police about the incident and in turn, police came to the Village and arrested the accused and the complaint to that effect was registered. Panchnama of scene of offence and inquest panchnama were drawn and the dead body was sent for the purpose of performing post mortem. Statements of various witnesses were recorded including eye witnesses and at the end of investigation, charge sheet was submitted qua the present appellant-original accused.

3. As it was a sessions triable case, court below committed the case into the Court of Sessions where it was numbered as Sessions Case No.10 of 1996. It was handed over to the learned Addl. Sessions Judge, Valsad at Navsari, for trial.

4. The learned Sessions Judge recorded statement of various witnesses and after accepting the closing pursis filed by the prosecution, the learned Sessions Judge recorded the further statement of the accused under Sec.313 of Cr.P.C. qua the incriminating evidence came on record qua the accused. After giving opportunity to the party concerned, he convicted the accused for the offence under Sec.302 and sentenced to suffer for life.
5. Being aggrieved and dissatisfied with the said judgment and order of conviction passed by the court below on 2-5-1997, the present appeal has been preferred.
6. We have heard the learned counsel for the appellant, Ms.Sadhana Sagar, and learned APP, Mr.R.C.Kodekar, for the respondent-State.
7. Ms.Sadhana Sagar has taken us through the charge Ex.3 together with the evidence of

various witnesses namely, the complainant-Ashokbhai Budhiabhai, who has been examined as P.W.No.1 at Ex.9 through whom the prosecution has proved the FIR Ex.10; the eye witness-Nayanaben Gajanandbhai Koli as P.W.No.2 at Ex.11; another eye witness-Keshavbhai Babubhai as P.W.No.3 at Ex.12 and also one Vasubhai Nanubhai as P.W.No.4 at Ex.13, who remained present immediately after the incident and informed the Umargam Police Station about the incident. She has also taken us through the evidence of panch witness to prove the inquest panchnama and other panchnama and also through post mortem note Ex.28. She has further taken us through the evidence of Dr.Bipinchandra Lallubhai Sakhiwala, who has been examined as P.W.No.10 at Ex.27 and also the evidence of I.O. Laljibhai Shankerbhai, who has been examined as P.W.No.9 at Ex.24.

8. It is mainly argued by her that the

complaint has been filed at about 1345 hours on 5-9-1995 for the incident which had taken place at about 9.15 a.m. on 5-9-1995 and hence there is a delay of four hours in lodging the FIR. Taking us through the evidence of both the eye witnesses, it is argued that looking to their conduct, their evidence should not be believed as they do not inspire any confidence. According to her, the complaint is concocted for the purpose of falsely implicating the accused with the crime in question by his father-in-law and, therefore, the appellant may be acquitted by quashing and setting aside the impugned judgment and order of conviction.

9. Learned APP, Mr.R.C.Kodekar, has taken us through the evidence of both the eye witnesses, Nayanaben and Keshavbhai along with the evidence of Dr.Bipinbhai as well as post mortem note and argued that prosecution has proved the case against the present

appellant accused beyond reasonable doubt. It is also argued that it is an incident which has taken place between 9.00 and 9.15 in the morning on a broad day light and witnesses, accused and the deceased are all from the same Village and therefore, question of misidentification may not arise at all. It is further argued that the accused was furious and was throwing stone and hence, he could not be overpowered by Keshavbhai alone but he was overpowered by the Villagers. Therefore, it cannot be said that he has been wrongly involved into the crime in question. It cannot also be said that the present witnesses are not eye witnesses. As far as delay in lodging the FIR is concerned, it has been argued that it is true that complaint has been filed at 1345 hours but the first requirement after the incident was to take the victim to the hospital and thereafter the Sarpanch has

informed Umargam Police Station and therefore, obviously the Police will come late on the spot due to the distance between the place of incident in the Village and the Umargam Police Station. As soon as they reached there, at the earliest opportunity complaint was lodged and hence, according to him, it cannot be said to be a delay. He has taken us through the reasoned judgment and order passed by the court below more particularly paras 11, 12 and 13 wherein the court below has discussed the evidence in detail and it is a well reasoned judgment delivered by the court after minutely dealing with the evidence on record.

10. We have gone through the evidence of eye witnesses, Keshavbhai and Nayanaben together with the complaint, the evidence of Dr.Bipinbhai, the post mortem report and evidence of I.O. and other documents. It is required to be noted that incident in

question has taken place at about 9.00 or 9.15 a.m. and at the earliest opportunity, Sarpanch had informed the police at Umargam and thereafter immediately police reached at the place of incident and complaint was filed. Looking to the seriousness of the incident, the first requirement was to take the victim to the hospital and hence, it cannot be said that there is a delay of about 3-4 hours in lodging the FIR.

11. On evaluation of the evidence of eye witnesses, Nayanaben and Keshavbhai, presence of Nayanaben has been established because panchnama of scene of offence support her presence as she is having her grocery shop very near to the place of incident and as it was 9.30 a.m. it was opened. Not only that, presence of Keshavbhai is also established as he had come there to buy tobacco. However, Keshavbhai and Nayanaben could not do

anything to save the victim because of furious attitude of the accused who threw the young boy aged about 8-9 years into the muddy water and sat down tightly on the body. The prosecution got support from the post mortem note as well as evidence of doctor. The post mortem note Ex.28 more particularly column No.17 i.e. the external mark of injuries shows that deceased has received seven injuries and all injuries are possible by way of stone. Not only that, stones have also been seized by way of panchnama upon which also the blood stains were found. Even column No.20 of the post mortem supports the say of the prosecution. Column No.20 reads that "Mud and sand choking the whaite trechea. Mud particles in the main bronchi of both lungs congested."

12. In view of the above, it can be said that the deceased succumbed because of drowning. Now the question comes whether drowning is

as a result of accident, suicide or homicide.

13. We have considered the case of the prosecution from the above stated three angles. On going through the evidence on record, it shows that it is not an accidental death because the deceased received seven stone injuries and stones were lying outside the mud and therefore, it cannot be said that injuries received by the deceased were received when he fell down in the mud. Not only that, there are two eye witnesses who have categorically deposed that the accused has caught the young boy aged about 8-9 years, gave him stone blows resulting into 6-7 injuries and thereafter, he has been thrown into the mud. Not only that, he sat down tightly on the body of the deceased which resulted into offence Sec.302 of IPC. Not only that, people have tried to save the deceased but as the

accused became furious, they could not do anything and therefore ultimately some other villagers came on the spot and he was overpowered. This is established even from the arrest panchnama. As far as the motive is concerned, it is established from the evidence of the complainant, P.W.No.1 Ashokbhai. In these circumstances, the only possible conclusion is that it is a case of homicide. Presence and act of accused on the spot has been established. As discussed earlier, the deceased, victim and the eye witnesses and other witnesses are from the same Village and it is an incident of broad day light at about 9.00 and 9.15 a.m. and accused has been overpowered and therefore, question of misidentifying or wrongly involving the accused into the crime in question does not arise

14. . This is supported by the version of independent witnesses who have no connection

either with the accused or the victim. It is a serious offence wherein young boy aged about 9 years was killed because of the dangerous act of the accused. We have considered the case of the accused from all angles and we are of the opinion that the impugned judgment and order of conviction is just and proper and do not call for any interference. Hence, the present appeal is required to be dismissed.

15. The appeal is dismissed.

(R.P.DHOLAKIA, J.)

(M.D.SHAH, J.)

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